In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.9841 of 2005

Date of Decision: 23.11.2006

B.S.Gupta …Petitioner.

Versus

Uttar Haryana Bijli Vitran Nigam Limited & Others.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE M.M.S.BEDI

Present: Mr.J.K.Goel, Advocate for Petitioner.

Mr.Narender Hooda, Advocate for the Respondents.

JUDGMENT

M.M.KUMAR, J. (ORAL)

The petitioner has prayed for issuance of directions to respondents to release the pension and pensionary benefits to him as per his entitlement along with interest. The petitioner has retired as Assistant Foreman after attaining the age of superannuation from the service of respondent-Authorities. At the time of retirement, proceeding in case FIR No.339 dated 25.7.2003 under Sections 7, 13, 49 & 8 of Prevention of Corruption Act, 1988 at Police Station City, Kaithal, were pending and the petitioner was placed under suspension on 29.7.2003 w.e.f. 25.7.2003. On 26.8.2003, the concession of bail was granted to the petitioner by the learned Special Judge, Kaithal, and the petitioner was reinstated on 17.2.2004. Thereafter, he retired on 30.4.2004. It remains undisputed that the petitioner has been paid 75% of pension without granting him the benefit of leave encashment. However, aggrieved by the action of the respondents by not

releasing the full pension and withholding of other benefits, he has approached this Court for issuance of a direction to release the pension and pensionary benefits to him.

After hearing learned counsel, we find that the claim made by the petitioner is meritorious. A Full Bench of this Court in the case **"Dr.Ishwar Singh v. State of Punjab" 1994(3) RSJ 543** considered the provisions of Rules 9.14, 9.15, 2.2(b) and 2.2(c) of the Punjab Civil Service Rules, Volume II and after detailed discussion in para 81 has concluded as under:-

> "81. As a result of the above discussion, I would conclude as under-
>
> (i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.
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> (ii) The Government can withhold the gratuity other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.
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> (iii) Pension cannot be adversely affected before a finding of guilt is returned.
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> (iv) The Government can initiate departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonable be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.

(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.

(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only".

It is thus obvious that the pension of the petitioner cannot be withheld or postponed nor any other benefit could be denied to him merely because some departmental proceedings or criminal proceedings are pending. Therefore, the writ petition deserved to be allowed as no further discussion on the aforementioned issue would be necessary.

For the reasons mentioned above, this petition succeeds. The respondents are directed to release 100% provisional pension to the petitioner and also the amount of leave encashment in accordance with law within a period of three months from the date a certified copy of this order is produced before them. The petitioner shall also be entitled to interest at the rate of 8% per annum on the arrears of pension with effect from the date it was payable till the time of its payment. Copy of the order be furnished dasti on payment of usual charges.

(M.M.KUMAR)
Judge

November 23, 2006 **(M.M.S.BEDI)**
dkb **Judge**